THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.27712 OF 2007

Date: 26.12.2007

Between:

P.Chandrakala

. . .Petitioner

AND

The District Collector, Krishna and others

. . .Respondents

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.27712 OF 2007

ORDER:

This writ petition is filed for a writ of mandamus to set aside notification, dated 05.10.2007 issued under Section 4(1) and declaration, dated 05.12.2007 issued under Section 6 of the Land Acquisition Act, 1894 (for short 'the Act') as illegal and violative of Articles 14, 21 and 300-A of the Constitution of India.

The petitioner claims to have been gifted extents of 54 cents and 48 cents in R.S.Nos.734/2 and 734/3 respectively (in all, an extent of Ac.1.02 cents of land) in Kalidindi Village and Mandal, Krishna District, under Gift Deed, dated 20.03.2004 towards pasupukumkuma. She further claimed that the gift deed was registered as document No.2606/2007 in the office of
Sub-Registrar at Kaikalur. Notification, dated 05.10.2007 was issued under Section 4(1) of the Act proposing to acquire the said extents of land along with other lands for providing house sites to weaker sections. In response to the notice issued under Section 5A of the Act, the petitioner filed her objections. By order, dated 17.11.2007, District Collector, Krishna, Machilipatnam rejected the objections filed by the petitioner. Later, declaration issued under Section 6 of the Act was published on 05.12.2007. These proceedings are challenged in this writ petition.

Heard Sri V.S.R.Anjaneyulu, learned counsel for the petitioner and the learned Assistant Government Pleader for Land Acquisition.

Learned counsel for the petitioner submits that the land to an extent of Ac.1.02 cents, which is proposed for acquisition was given to

the petitioner by her father towards pasupukumkuma in the year 2004 at the time of her marriage and the gift deed was registered under a separate document in the year 2007. He, therefore, submitted that respondent No.1 committed a serious error in holding that the said gift deed was executed evidently for the purpose of avoiding acquisition. Learned counsel relied upon the judgments of **K.Yadaiah v. Government of Andhra Pradesh**[1] and **Hindustan Petroleum Corporation Limited v. Darius Shapur Chenai and others**[2], and contended that no proper enquiry was held by respondent No.2 and, therefore, the petitioner is denied a reasonable opportunity of being heard.

I have carefully considered the submissions of the learned counsel for the petitioner and I have not felt persuaded to accept the same. A perusal of order, dated 17.11.2007 passed by respondent No.1 shows that enquiry was held on 01.11.2007 by respondent No.2 and on the basis of the same, he submitted his remarks. The remarks of respondent No.2 extracted by respondent No.1 in the said order show that in support of her plea that she was gifted the land proposed to be acquired, she produced a plain paper agreement purported to be a gift deed. Having considered the same, respondent No.2 opined that the said transaction is only an after thought and that the same is not a genuine one, intended only for the purpose of defeating the present land acquisition proceedings. It is further found that the family of Sri K.Venkata Satyanarayana, father of the petitioner, who purportedly executed sale deed, is having Ac.18.04 cents and that their interest will not be affected by acquiring Ac.1.02 cents.

Having carefully considered the reasons given by respondent Nos.1 and 2, I am of the view that they do not suffer from any material

illegality warranting interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. Admittedly, the petitioner failed to file the alleged registered gift deed before respondent No.2 and what was produced before him was only an unregistered document purported to be a gift deed. An unregistered document purporting to gift immovable property is contrary to the provisions of Section 123 of the Transfer of Property Act and hence the same has no validity in law. The respondents, in my view rightly, did not take the same into consideration and drew a presumption that the same was pressed into service only for the purpose of avoiding acquisition. Learned counsel for the petitioner has not disputed that the father of the petitioner owns Ac.18.04 cents of land. Therefore, the judgment of the Full Bench of this Court in **K.Yadaiah v. Government of Andhra Pradesh** (1 supra), wherein it is held that the instructions issued by the Government not to acquire the lands of small farmers to the extent possible, has no application to this case.

As regards the submission of the learned counsel that no proper enquiry was held, it is not the case of the petitioner as could be seen from the averments contained in the affidavit filed in support of the writ petition that no enquiry was held at all. The petitioner merely averred "respondent No.2 without giving an appropriate opportunity of hearing and without conducting appropriate enquiry in the light of the principles laid down in the decided cases while interpreting Section 5A of the Act through his proceedings bearing Rc.G4.4700/2007, dated 17-11-2007 overruled the objections and informed the same to me which was received on 30.11.2007." The said statement of the petitioner contained in the affidavit is wholly equivocal and vague. The petitioner did not explain what she meant of the phrase 'appropriate enquiry' and why the enquiry held by respondent No.2 is not an appropriate

enquiry. Therefore, I am of the view that the judgment of the Supreme Court in **Hindustan Petroleum Corporation Limited v. Darius Shapur Chenai and others** (2 supra) has no application to the facts of this case.

For the aforementioned reasons, the writ petition is dismissed.

C.V.NAGARJUNA REDDY, J

26th DECEMBER, 2007

Note: furnish c.c. in four (4) days.

B/o

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[1] 1983(1) ALT 233 (FB)

[2] 2005(7) SCC 627